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**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
BOSTON DIVISION**

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

JOYCE ROWLEY,  
PLAINTIFF, PRO SE

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CASE No. 21-cv-\_\_\_\_\_

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V.

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CITY OF NEW BEDFORD, MASSACHUSETTS

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DEFENDANT

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**COMPLAINT  
FOR INJUNCTIVE & DECLARATORY RELIEF**

This is a separate but related Endangered Species Act (ESA) action on the matter of the captive Asian elephants Ruth and Emily at the Defendant City of New Bedford's Buttonwood Park Zoo. Judgement in the related case found that Ruth's and Emily's care did not harm or harass them, and the Defendant's elephant management met general animal husbandry practices.(C/N 17-cv-11809, Dkt 91).

However, there have been substantial changes to the elephant exhibit and management, to the detriment of both elephants. Notably, the facilities housing them became dilapidated causing both elephants to present with pododermatitis-- a painful foot disease. In Ruth's case, her left front foot became infected and, due

to the Defendant's negligence, progressed to sepsis osteitis. Emily's pododermatitis has been untreated for months. Since the Defendant's new veterinarian ignored Ruth's foot infection for months and played down Emily's pododermatitis, no radiographs have been taken to determine the extent of Emily's infection. Consequently, she is now showing signs of pain in her back feet now.

### **I. PARTIES**

Joyce Rowley, Plaintiff pro se, is a former career community planner with 25 years experience in building, zoning and planning offices. Her planning experience required extensive research and working knowledge of such diverse actions as low-level radioactive waste siting; federal military base closings; Superfund site regulation, closing, and delisting; property management and acquisition, and more. Rowley also had four years experience with the USDA Soil Conservation Service (now Natural Resources Service) as a civil engineering technician, responsible for full-time on-site inspection of stormwater and earthworks projects and streambed repair. She also ran a soils testing laboratory at that time.

Rowley is a New Bedford resident and taxpayer, a member of the Buttonwood Park Zoological Society, and as noted in the related case decision, a "keen observer and frequent visitor" at the Zoo. In fact, she continued and will

continue to visit Ruth & Emily, and the other animals at the Zoo. Thus, she has maintained her legal standing granted in the related case (Id. Dkt.34).

Defendant City of New Bedford, is an incorporated municipality. It owns and operates the Zoo as a department in the City. Zoo employees, including the veterinarian, are under the Defendant's control.

## **II. JURISDICTION**

This Court has jurisdiction over the case pursuant to ESA 16 USC § 1540(g) and 28 USC § 1331 (federal question).

Venue in this court is proper pursuant to 16 USC S 1540(g)(3)(A) because the violations occur and continue to occur in Bristol County, Massachusetts. Further, venue is proper under 28 USC § 1391 because a substantial part of the events or omissions giving rise to the claims occurred within this District and Division, and all parties reside here.

## **III. FACTUAL BACKGROUND**

A. Affected Species. Asian elephants (*Elephas maximus*) have been listed as endangered species under the ESA since 1976 (41 Fed. Reg. 24062, 24066. June 14, 1976) and listed as an Appendix I species in the Convention on the Trade of Endangered Species of Flora and Fauna (CITES) since its inception in 1975.

The population of Asian elephants in United States zoos is aging and shrinking, in large part due to the difficulty of breeding elephants in captivity,

and premature deaths due to inadequate conditions in zoos. Small zoos like Buttonwood Park Zoo are finding it increasingly difficult to meet the social and physical needs of the aging elephants that remain in their care.

In their natal subtropical habitat, Asian elephants routinely traverse a range of two to 100 square miles, often walking 20-30 miles per day.

Elephant feet, also referred to as hoofs, have a thick pad on the bottom that act as cushions to their foot bones. Elephant foot bones resemble human hand bones in that each toe (digit) is comprised of several smaller bones (phalanges). The outermost bone resembles a semi-circle. With the pad carrying most of the weight, it appears the elephant walks on "tiptoes." Nails attached to the soft tissue help give the elephant traction as they walk. (Exhibit 1, Asian elephant foot structure, Credit: Reconstructed CT scan of elephant foot. Sophie Regnault.

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Elephant feet, legs and joints evolved for extensive walking. Elephant footpads and nails grow constantly, and in the wild are kept clean and healthy through regular walking.

Captive elephants are predisposed to pododermatitis, also called canker or hoof rot, as a result of standing in moisture and excrement, particularly on hard substrate. Other primary factors are lack of exercise and poor nutrition.

Osteitis, or osteomyelitis, infection of the bones, is caused by poor hoof

management, and the above factors. (Mikota, S. M., Fowler, M., Biology, Medicine & Surgery & Ch. 20, Foot Disorders, Murray Fowler, p. 277) Often a sharp instrument or object carries the infection into the bone.(Id. p. 286) Left to fester, the infection dissolves the bone (lysis).

B. Living Conditions. Defendant Zoo's elephant exhibit is under 20,000 square feet of area accessible to Ruth and Emily. It contains a 2,500 s.f. concrete barn with a dirt floor that has formerly had a 1200 s.f. stall and an 800 s.f. stall separated by post and cable; a tool shed area, and a protected viewing area. Renovations to the interior in 2017 divided the two stalls into three smaller stalls of about 750 s.f. each, a central aisle and an “elephant restraining device” or ERD.

The barn's concrete floor was partially removed and replaced with a sand and dirt floor in 2012. It becomes compacted by the weight of two elephants standing and walking on it. Additionally, it is hosed down, but it is unclear whether this removes the elephants' waste entirely. Hosing may cause additional compaction creating a hard substrate. The sand is replaced very infrequently. In 2021, it was not replaced for six months, then once again two months later. It has been two months since it was replaced.

The exterior yard is comprised of hard-packed sand/dirt and a 100,000-gallon concrete pool that divides the old exhibit area (12,000 s.f.) from the new area (8,000 s.f.). The pool is rarely used by the elephants and often contains duck waste

and algae. The new outer area does not contain a separate potable water source for the elephants for cooling or drinking. When confined to the outer area, the only water available is from a drain pipe at the water feature.

There are two open air timber structures, one on each side of the pool. They do not provide protection from rain, sleet, or snow. The structure on the inner yard lacks a roof and so provides little or no shade.

The elephant exhibit is too small to allow elephants to roam or to engage in natural foraging behavior. There are four trees in the outer area but no branches left at a level for foraging.

The Asian elephant barn at the Zoo has a leaking roof. A bid to repair it was rejected as too high (Exhibit 2. Bid Awatdd, City of New Bedford Purchasing Department website). The leak supposedly is over the concrete viewing area. Drain holes were drilled to take the water outside. Instead, several drain holes on Ruth's side of the barn are plugged, and the water runs back into Ruth's stall. There are two other pipes that also drain water into Ruth's stall from an unknown source.

The elephants' stalls are 20' x 40' leaving little room for a 12' long elephant to avoid standing in their waste when confined while the Zoo is closed.

C. Asian elephant Ruth. Ruth is a 60-year-old female who was captured ~1961. She first shows up in historic records at Benson's Wild Animal Park in Hudson,

NH. According to Bret Bronson, former elephant handler at Benson's, her import papers indicated her birth year as 1960. This was corroborated by Angela Spiegel, a former employee of the East Coast Camel Co., Ruth's second owner.

When brought to the Defendant's Zoo in 1986, Ruth weighed just 5900 lbs. She was considered as being in "poor condition, malnourished." Ruth weighed 6400 lbs. in December 2019. She now weighs 5921 lbs.,

For the past two years, Ruth has been restricted from moving, eating and drinking when on exhibit. In the linked video, Ruth is seen swaying in stereotypy, and then spots a bit of food on the ground. Rather than step forward, she strains to reach it as if an imaginary chain is on her back leg (Ruth reaching at 50 sec., <https://m.youtube.com/watch?v=Jl7oSwBl5uo>). It typifies the forced immobility the Defendant's Zoo has imposed on Ruth. As positive training allows elephants to participate or not, Ruth's immobility is the result of negative or adverse training. Such training would require food and water deprivation and physical force (beatings). It clearly isn't her preference.

Although Ruth has had foot abscesses, and joint and foot arthritis in the past as a result of routine confinement when the Zoo was closed<sup>1</sup>, her current canker (hoof rot) and sepsis osteitis is a result of neglect and mistreatment.

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<sup>1</sup> Both elephants have been given glycoflex for joint health. Ruth receives ibuprofen as well since 2015. Both elephants have had occasional laser therapy for arthritis in their leg joints.





The nail on Ruth's front left foot cracked on January 27, 2021. The barn dirt floor was not removed and replaced from January 14 to June 18, 2021. No radiographs had been taken of Ruth's feet since 2017.<sup>2</sup>

After minimal treatment, radiographs were taken on April 25 and then again on June 4, 2021. According to the Zoo's clinical records, several consulting veterinarians recommended against trimming the canker (referred to as "crabmeat" by the Zoo's veterinarian) because it would worsen. Yet the Defendant's veterinarian trimmed the canker six times between June and July. In that time, Ruth's nail bed blew out (Exhibit 3. Photos dated June 12 and July 12, 2021).

Additional consultants recommended not to trim on July 25, as it might cause squamous cell cancer (SCC) or osteitis, yet the Defendant's veterinarian did so another 15 times, sometimes "aggressively," even when other treatment had finally reduced the canker on September 5, 2021.

On May 7, four months after the canker started, the Defendant's veterinarian took a culture indicating Ruth's foot was infected by at least one agent. It was ignored, although it was malodorous. A month later, on June 4, a second culture was taken indicating the presence of three strains of bacteria. The Defendant's veterinarian wrote them off as "contaminants." On June 24, 2021, Ruth's right

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<sup>2</sup> Blurry unlabeled radiographs surfaced this past summer, purportedly from 2020.

front foot also had proliferative pododermatitis. Still the Defendant's veterinarian denied it was from an infection.

During this period the Defendant's veterinarian twice took radiographs and claimed no osteomyelitis (osteitis) was present. She was unqualified to do so as she is not a Diplomate of the American College of Veterinary Radiology (DACVR).

But by June 4, Ruth's outermost toe bone was already gone. (Exhibit 4. Brookfield report, dated August 6, 2021, refers to P3 [toe bone] gone "two months ago.")

When a third culture taken at the end of July indicated three strains of bacteria known to cause osteitis<sup>3</sup>, the Defendant's veterinarian finally acknowledged Ruth's foot was infected, but continued trimming, knowing the risk of osteitis.

On August 6, when additional radiographs were taken, the Defendant's veterinarian again claimed no osteomyelitis was present. By this time, the infection had taken another toe bone on that digit, according to the DACVR Eric T. Hostnik of Brookfield Zoo.

But the Defendant's veterinarian continued trimming, even after receiving the DACVR's report finding sepsis osteitis, with surgical debridement as a possible cause.

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<sup>3</sup> Mikota, S. M., Fowler, M., Biology, Medicine & Surgery & Ch. 20, Foot Disorders, Murray Fowler, p. 280)

In fact, the Defendant's veterinarian ordered "stall rest," unheard of for osteitis and canker, and now cellulitis (infection of the foot tissue). Ruth was forced to stay in the same fetid conditions that caused the infection that trimming forced into her toe bones.

No further radiographs are available after August 27, 2021. Yet even an untrained eye can tell two toe bones are missing (Exhibit 5. Radiograph, Ruth's left front foot, August 27, 2021).

By June, the infection had spread not only to Ruth's right foot, but to Emily's right foot, too.

C. Emily. Asian elephant Emily is approximately 56 years old, and was purchased by the Defendant City in 1968 at age 4 years. She is larger than Ruth by usually 1500 lbs. Currently she weighs 7629 lbs. Her maximum weight was 8200 lbs. in 2019.

Emily has been on a reduced diet for six years. However, she has been allowed to walk around the small half acre exhibit, and to drink and cool as needed.

In July, Emily was first diagnosed with pododermatitis. No trimming or cryotherapy was performed although Emily had a nail canker and was visibly in pain. In this video taken on July 15, 2021, she is seen holding her right front foot up. (<https://m.youtube.com/watch?v=zAOJyWZot3U>).

Beginning in August, Emily was separated from Ruth by a metal gate between the outer yard and the area near the barn. After August 9, there were no further clinical notes by Defendant's veterinary staff.

Yet Emily was seen holding her right front foot up in pain through to September (Video taken September 9, 2021 <https://youtu.be/22cTYh1xHqY>). And as recently as October 2-5, Emily was holding up first her left rear foot and then her right rear foot. Records up to September 26, 2021 show no medical treatment.

#### **IV. LEGAL FRAMEWORK**

An "endangered species" identified by the ESA is "any species in danger of extinction." 16 USC § 1531(b). Section 9 of the ESA prohibits the "taking" of any endangered species and also makes it illegal to "possess" any endangered species that has been unlawfully "taken." Id. § 1538(a)(1)(B) and (a)(1)(D).

The term "take" is defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct." Id. § 1532 (19). The term "harm" includes any act that "kills or injures" an endangered animal. 50 CFR § 17.3. Subject to certain limited exceptions for captive bred animals, the term "harass" includes "an intentional or negligent act or omission which creates the likelihood of injury [to an endangered animal] by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include but are not limited to feeding, breeding, or sheltering."

The harassment exception that the zoo industry uses is debatable in its application to Ruth and Emily (See, Rowley's Petition for a Writ of Certiorari, USCt C/N 20-1802, Dnd, 10/4/21).

1. Take caused by Defendant City harms and harassed Ruth and Emily in violation of the ESA: Unsanitary barn; failure to repair roof, inadequate nutrition, forced confinement.

Ruth's long list of injuries—loss of use of her trunk, loss of half her tail, loss of half her right ear, now includes loss of at least two toe bones. Emily may be losing toe bones, or worse if her pad is infected.

This harm was entirely preventable, and was caused by negligence on the part of the Defendant. From not repairing the barn roof, not removing water sources in Ruth's stall, failing to recognize Ruth's weight loss, failing to let Ruth be mobile, and failing to remove and replace the flooring, the Defendant City negligently and perhaps intentionally caused Ruth to lose toe bones and Emily to suffer in pain needlessly.

2: Take caused by Defendant City harms and harassed Ruth and Emily in violation of the ESA: Inadequate shelter in inclement weather.

The City Zoo harms and harasses Ruth by confining her in a facility that exposes her to extreme heat and extreme cold without shelter and significantly disrupts her normal behavioral patterns, including sheltering and feeding. 50

C.F.R. § 17.3.

Ruth was routinely forced to stand for up to four hours under the inner structure in extremely hot weather, including during heat advisories, and then at the barn door. During those times, she is prohibited from moving, which causes or exacerbates her arthritis in her joints.

Further, she is deprived of food, water and the ability to cool during that time. When she is allowed to move, she immediately goes to water to drink and spray on herself to cool, and to dust. She then looks for food as may be available.

On several occasions, Ruth was kept inside the barn during 100°F temperatures for hours with the barn doors closed. She was not allowed access to water to cool. When she was released, she immediately sought water to cool. The barn is not air conditioned.

According to the zoo's records, Ruth receives only 80 - 100 lbs of hay daily and 30 lbs. of grain, and produce. Asian elephants eat up to 300 lbs. of grasses and grains per day.

This failure to provide Ruth with adequate nutrition and exercise resulted in a 479 lb. weight loss in two years, a poor body condition and contributed to the proliferative pododermatitis.

#### **V. PRAYER FOR RELIEF**

##### **Declaratory and Injunctive Relief**

Plaintiff Rowley is entitled to Declaratory and Injunctive relief. Plaintiff

suffers and continues to suffer actual injuries from knowing that Ruth and Emily are harmed by Defendant's negligence and mistreatment. Rowley is harmed emotionally, spiritually, and aesthetically. This harm is irreparable because it cannot be measured.

Legal remedies which do not remove Ruth and Emily from the Zoo are illusory. Merely declaring that the Defendant's treatment of Ruth and Emily violates Section 9 of the ESA does not by itself remedy Plaintiff's injuries.

There is a substantial likelihood that Plaintiff will succeed on the merits of this case. The Defendant's mistreatment of Ruth and Emily glaringly violates Section 9 of the ESA and so is prohibited.

The Defendant will not be harmed by removal of the elephants. Zoogoers are buying tickets to see elephants whose living condition is so filthy their foot bones are infected. That does not serve *any* public interest. The elephants' suffering outweighs the Defendant's self-interest in keeping them.

All conditions precedent to Plaintiff's claims for relief have been performed or occurred prior to filing this complaint.

Plaintiff demands a jury trial of any triable issues pursuant to Rule 38 of the Federal Rules of Civil Procedure.

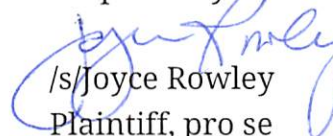
The conditions under which the Defendant holds Ruth and Emily as described above "takes" them in violation of Section 9 of the ESA, 16 USC §

1538(a)(1)(D). These unlawful activities injure Plaintiff.

THEREFORE, Plaintiff requests that this Court enter a judgement:

1. Declaring that the Defendant City's treatment of Ruth and Emily violates Section 9 of the Endangered Species Act;
2. Enjoining the Defendant from euthanizing either elephant;
3. Enjoining the Defendant from continuing to violate the Endangered Species Act;
4. Enjoining the Defendant from continuing to possess Ruth and Emily;
5. Enjoining the Defendant from transferring Ruth and Emily to the Buttonwood Park Zoological Society, or another public or private zoo;
6. Allowing Plaintiff's veterinarian to inspect Ruth and Emily in the barn;
7. Transferring Ruth and Emily to Plaintiff for transport to a sanctuary with appropriate elephant facilities and staffing;
8. Awarding transport costs to Plaintiff;
9. Awarding Plaintiff either elephant's remains should either die at the zoo;
10. Granting Plaintiff any other such relief as may be equitable.

Respectfully submitted,

  
/s/Joyce Rowley  
Plaintiff, pro se  
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